IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.6.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.446 of 1999

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Division-I) Ltd.,
Villupuram.
(Cause Title accepted -
vide order dated 23.2.1999 in C.M.P.No.2886 of 1999)
.. Appellant

vs.

1. Alavandar
2. Muthayyan
3. Balu
4. Lakshmi .. Respondents

Civil Miscellaneous Appeal against the award and decree dated 11.9.1998 in M.C.O.P.No.712 of 1994 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Cuddalore.

For appellant : Mr.Om Prakash for M/s.Rajnish Pathyil
For respondents : Mr.S.Shanmugasundaram

JUDGMENT

This appeal is filed by the Transport Corporation, challenging the order of the Tribunal in M.C.O.P.No.712 of 1994 on the file of the Motor Accidents Claims Tribunal, dated 11.9.1998.

2. Petition under Section 166(1) of the Motor Vehicles Act was filed by the respondents/claimants before the Tribunal for compensation due to the death of one Saroja in a motor accident that took place on 25.3.1992.

3. It is the case of the claimants that on 25.3.1992 at 16.45 hours at Karaikadu bus stop, the deceased was waiting for a bus on the extreme left of the main road and at that time, the vehicle owned by the Transport Corporation bearing Registration No.TN-32-N-102 driven by its driver rashly and negligently, dashed against the deceased and ran over her. Due to this accident, the deceased died on the spot. The deceased was running tailoring business and was maintaining her family and due to her death, the entire family suffered for want of income. The claimants estimated the loss and damages to the extent of Rs.1,50,000/- and claimed the same as compensation.

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4. The Transport Corporation filed a counter before the Tribunal contending that the deceased got down from another bus and crossed the road from behind the bus and while doing so, she was

hit by the bus of the Transport Corporation. The accident was due to the negligence on the part of the deceased and the Transport Corporation is not responsible for the same. The driver of the Transport Corporation did not drive the vehicle rashly or negligently to cause the death of the deceased.

5. On behalf of the claimants, P.W.1 Muthaiyan (second petitioner before the Tribunal), P.W.2 Mahalingam who is an independent witness and P.W.3 Sabapathi who is the eye-witness to the occurrence were examined and Ex.P-1, the certified copy of the First Information Report, Ex.P-2, the certified copy of the Motor Vehicle Inspector's Report, Ex.P-3, the certified copy of the post-mortem report, Ex.P-4, the certified copy of the charge-sheet, Ex.P-5, the legal heir certificate issued by the Tahsildar, Tharangambadi and Ex.P-6, the school transfer certificate of the deceased Saroja, were marked. On behalf of the Transport Corporation, R.W.1 Kesavan, the driver of the bus belonging to the Transport Corporation was examined and no document was marked on the side of the Transport Corporation before the Tribunal.

6. The Tribunal, after considering the above evidence, came to the conclusion that the accident had happened due to the rash and negligent driving on the part of the driver of the Transport Corporation and fixed the compensation at Rs.1,50,000/-. Aggrieved against the award, the Transport Corporation has filed this appeal.

7. The evidence of P.W.3 Sabapathi is that on 25.3.1992 at about 4.45 p.m., he was chatting with his friend in front of a petty shop in Vridhachalam-Cuddalore Road near Karaikadu bus stop and stated that the deceased Saroja was standing on the eastern mud portion of the main road which runs north-south, and at that time, a town bus bound for Cuddalore came and stopped at the bus stop and at the same time, the Transport Corporation Bus bearing Registration No.TN-31-N-102 came from the opposite direction which was bound for Kallakurichi and it was driven in a rash and negligent manner and the said bus dashed against the deceased Saroja who was standing on the eastern mud portion of the road abutting the main road and the bus sped away without stopping. P.W.3 further confirmed that the deceased died of the injuries on the spot itself and that he went to Cuddalore O.T. Police Station and lodged Ex.A-1 complaint. The evidence of P.W.3 was found to be corroborated by the F.I.R. Ex.A.1 lodged immediately after the occurrence and the Tribunal held that the evidence of P.W.3 was cogent, convincing, probable and natural.

8. R.W.1 driver would state that the deceased suddenly crossed the road without watching the bus and therefore, the accident had happened. However, the evidence of the driver was disbelieved.

9. The Tribunal came to the conclusion that the driver of the Transport Corporation did not take any precautionary measure and did not attempt to show caution while driving the vehicle and in such circumstances, the accident had happened. The Tribunal therefore held that the Transport Corporation is vicariously liable for rash and negligent act of the driver of the bus belonging to the Transport Corporation. Though in the grounds of appeal, the appellant would submit that the evidence of P.W.3 and the Ex.A-1

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F.I.R. should not be relied upon, it is also contended that the police officer was not examined to prove the negligence. Except relying on the evidence of the driver R.W.1, no other material has been placed either before the Tribunal or before this Court to sustain such a ground. The question of examining the police officer to prove the negligence does not arise in a case of fatal accident, when apparently, the police officer is not a witness to the accident. The only person competent is P.W.3, who is the eye witness and there is no material to disprove the evidence of P.W.3. In view of the clear evidence of the eye witness, the question of contributory negligence does not arise. I find no reason to interfere with such finding as it is based on evidence of the eye-witness and other material documents.

10. As regards the compensation, the Tribunal, after taking into consideration the age of the deceased as 45 years at the time of the accident based on the school records and also considering the fact that she was running a tailoring shop with five sewing machines and employees and was also doing milk-vending business, fixed the income of the deceased at Rs.2,500/- per month. The evidence of P.W.1 was relied upon and not refuted. P.W.2, an independent witness also would support the claim and the income of the deceased. The Tribunal rightly relied on the decision of the Apex Court reported in 1996 (2) L.W. 266 (U.P. State Road Transport Corporation and others vs. Trilok Chandra and others) and after deducting personal expenditure from the earnings of the deceased, came to the conclusion that the annual loss to the dependency suffered by the claimants works out to Rs.12,000/- and adopted the multiplier "13" and determined the amount at Rs.1,56,000/-.

11. The Tribunal also granted Rs.5,000/- towards loss of consortium to the first claimant-husband of the deceased and the other claimants being the children of the deceased, were entitled to Rs.5,000/- each towards loss of love and affection. In addition to the same, the claimants were entitled to a sum of Rs.2,000/- towards funeral expenses and in all, a total sum of Rs.1,78,000/- was awarded by the Tribunal. However, since the claim itself was only at Rs.1,50,000/-, the Tribunal restricted the total compensation at Rs.1,50,000/- with interest at 12% per annum.

12. As far as the quantum is concerned, the ground taken by the appellant is that the evidence of P.Ws.1 and 2 in respect of age, occupation and income should not be relied upon. Even though a specific claim was made by the claimant with regard to the income of the deceased, except a bald denial, there is nothing to show to disprove such a claim. Ex.A-6 is the school certificate with regard to the age. Further, P.W.2 as an independent witness supported the claim petition to say that the deceased was engaging milk vending business and was running tailoring shop and therefore, on the basis of such evidence, the Tribunal has calculated the income of the deceased at Rs.1,500/- per month and after deduction of the personal expenses arrived the monthly income at Rs.1,000/- as the amount that will be available to the claimants per month and consequently, the total loss of income was determined by applying 13 multiplier at Rs.1,56,000/- (Rs.1,000/- x 12 x 13 = Rs.1,56,000/-). However, such claim is restricted to Rs.1,50,000/- in the claim petition.

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Therefore, the determination of the quantum is based on evidence on record. The logic and reasoning adopted by the Tribunal seem to be fair and just and calls for no interference.

13. In such view of the matter, the award of the Tribunal cannot be found fault with and the appeal is therefore dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cs/ts

To

1)The Motor Accidents Claims Tribunal (Sub-Court), Cuddalore.

2)The Record Keeper, V.R. Section, High Court, Madras.

1 cc to Mr.S.Senthil Nathan, Advocate, Sr. 24771

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